

County of Loudoun
Department of Planning
MEMORANDUM

DATE: January 25, 2011

TO: Loudoun County Planning Commission

FROM: Marchant Schneider, Project Manager
Julie Pastor, Director

**SUBJECT: February 2, 2011 Planning Commission Worksession
Loudoun Valley Estates III – ZMAP 2010-0004**

BACKGROUND:

The Planning Commission held a public hearing regarding ZMAP 2010-0004 on October 27, 2010. 17 members of the public spoke regarding the application and noted various concerns regarding: 1) an inability to build additions to existing homes within LVE III under a PD-GI zoning designation; 2) future public road access to LVE III and homeowner safety upon expansion of Route 606 within a 200' right-of-way; 3) potential for noise attenuation along Route 606 under a PD-GI zoning designation versus an R-1 zoning designation; 4) applicability of performance standards (noise, light and glare, earthborn vibration) under a PD-GI zoning designation versus an R-1 zoning designation; 5) building restrictions on adjacent industrially-zoned properties should an R-1 zoning designation be approved; 6) precedence for future conversions of industrial properties to residential use within the Route 606 Corridor should the rezoning application be approved; and 7) interruption or delay of the expansion of Route 606 subsequent to an R-1 zoning designation. At the conclusion of the hearing, the Commission voted 8-1 (Keirce opposed) to forward the application to a subsequent workesssion for further discussion. At the suggestion by several members of the public that the various stakeholders meet to resolve concerns and identify possible alternatives, the Chairman encouraged those individuals to meet prior to the worksession.

Commissioners requested clarification regarding development standards applicable to PD-GI and R-1 zoning districts. Commissioners also requested information regarding airport noise contours associated with future expansion of Dulles Airport, an option for a hybrid zoning district to accommodate homeowner and business community concerns, a copy of sales contract disclosing the PD-GI zoning designation to homeowners within LVE III, clarification of safety and traffic concerns referenced by homeowners, and the potential to amend the Vested Rights Agreement establishing the LVE III subdivision as a non-conforming use within a PD-GI zoning district.

UPDATE

On November 18, 2010, staff met with HOA representatives and representatives of the Washington Airports Task Force, Route 606 Coalition & Dulles Loop Implementation Group, Dulles South Alliance, Mercure Business Park Association, and the Metropolitan Washington Airports Authority. Staff outlined the various development standards which would apply subsequent to an R-1 zoning designation. Participants reaffirmed concerns outlined at the public hearing, vetted alternatives, and requested additional information regarding VDOT policies specific to noise attenuation, applicability of zoning ordinance standards to the Northwoods property where a road separates the property from LVE III, and what commitments the County could make to preclude future consideration of residential development along Route 606. At the conclusion of the meeting, the HOA and business representatives agreed to forward a consolidated list of concerns / issues to the project manager and to attend a follow up meeting in January 2011. Comments were received via email on December 3, 2010 (*see Attachment 3*).

A second meeting was held on January 6, 2011. The consolidated list was discussed and the group was given the opportunity to ask questions of various staff requested to be in attendance to include representatives from VDOT, OTS, Zoning, County Administration, and the County Attorney's office. At the conclusion of the meeting, staff recommended the group reassess their positions based on the discussion and update the staff as appropriate. No additional correspondence has been received.

COMMISSIONER QUESTIONS FROM OCTOBER 27, 2010 PUBLIC HEARING

Applicable Zoning Ordinance Standards / Development Options (PD-GI vs. R-1)

The below table and adjacent zoning districts map (Figure 1) outlines the various development standards which would apply under both PD-GI and R-1 zoning district designations.

Activity / Development Standards	PD-GI (Existing)	R-1 (Proposed)
Building additions (residential)	LVE III is a non-conforming use within the PD-GI zoning district. Homes can be expanded through individual legislative applications (SPEX) to remove non-conforming status and permit additions under PD-GI district standards.	Building additions permitted by-right, subject to R-1 zoning district standards.
Construction of exterior structures (<i>i.e. fences, decks, patios, etc.</i>) (Section 5-200)	No limitation	No limitation

Activity / Development Standards	PD-GI (Existing)	R-1 (Proposed)
Interior renovations	No limitation	No limitation
Zoning Ordinance Performance Standards (noise, light and glare, earthborn vibration) applicable to commercial uses bordering LVE III (Section 5-1500).(*)	Adjacent commercial/Industrial uses required to adhere to light and glare standards in proximity to residential use. No requirement to adhere to noise and earthborn vibration standards.	Noise, light and glare, earthborn vibration standards applicable to commercial uses where adjacent to a residential district boundary and/or residential use
Building / parking setback standards applicable to PD-GI uses bordering LVE III (Section 4-605(B)(2),(B)(3)).(*)	15'	15'
Building / parking setback standards applicable to certain PD-GI special exception uses bordering LVE III (Section 4-607(H)).(*)	15' (Schools 100')	200'
Building / parking setback standards applicable to PD-CC-CC uses bordering LVE III (Section 4-205(C)(2),(C)(3))	35' (<i>can be modified through ZMAP / ZMOD application</i>)	100' (<i>can be modified by ZMAP / ZMOD application</i>)
Buffering / Screening Standards applicable to commercial uses bordering LVE III (Section 5-1414)	Use specific (<i>varies - Type 1 to Type 4 buffer yard</i>)	Use specific (<i>varies- Type I to Type 4 buffer yard</i>)
Noise attenuation associated with expansion of Route 606 within 200' ROW / future public road access	VDOT study period for Route 606 expansion will assess traffic noise impact on adjacent residential uses and determine appropriate mitigation, if any. Route 606 access will be determined at time of final road design.	VDOT study period for Route 606 expansion will assess traffic noise impact on adjacent residential uses and determine appropriate mitigation, if any. Route 606 access will be determined at time of final road design.

(*) LVE III and the Northwoods property are separated by a PD-GI parcel owned by Loudoun County Public Schools (emergency road access to Route 606) and high-tension powerline easement. As such, building / parking lots setback standards and performance standards for noise and earthborn vibration would not apply.

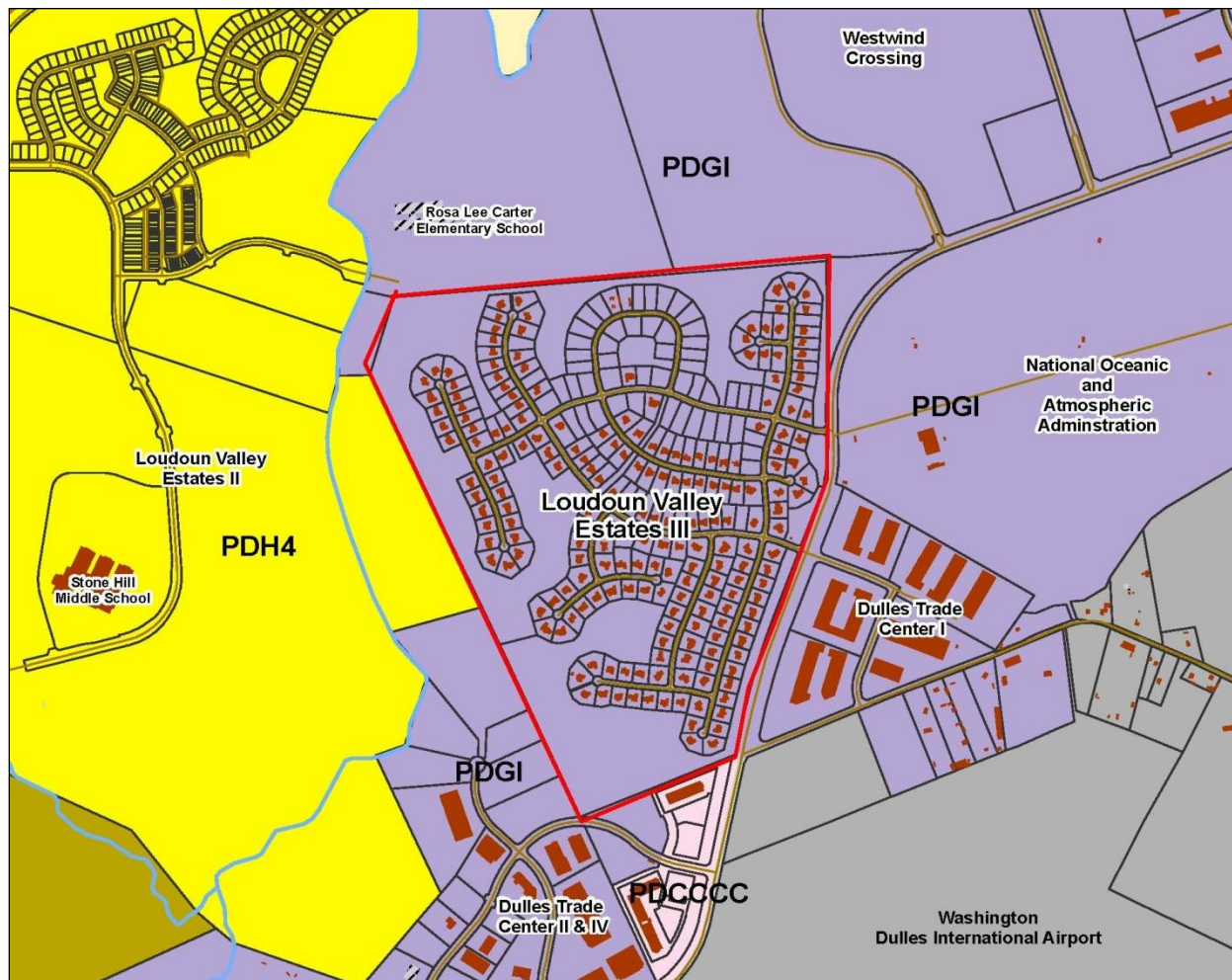


Figure 1. Adjacent Zoning Districts

Airport Noise Contours Associated with Future Expansion of Dulles Airport

Ongoing and planned future runway expansion at Dulles International Airport has been incorporated into the Airport Impact Overlay District (AI). The proximity of LVE III to the three noise contours associated with the AI is provided in Figure 2 below. Generally, residential construction is prohibited within Ldn 65. Residential uses are permitted within the Ldn 60-65 noise contours; however, a disclosure statement noting the location of the use within the noise contour is required as well as acoustical treatments ensuring interior noise levels does not exceed 45 decibels. Residential uses that are permitted within one mile of the Ldn 60 only require a disclosure statement.

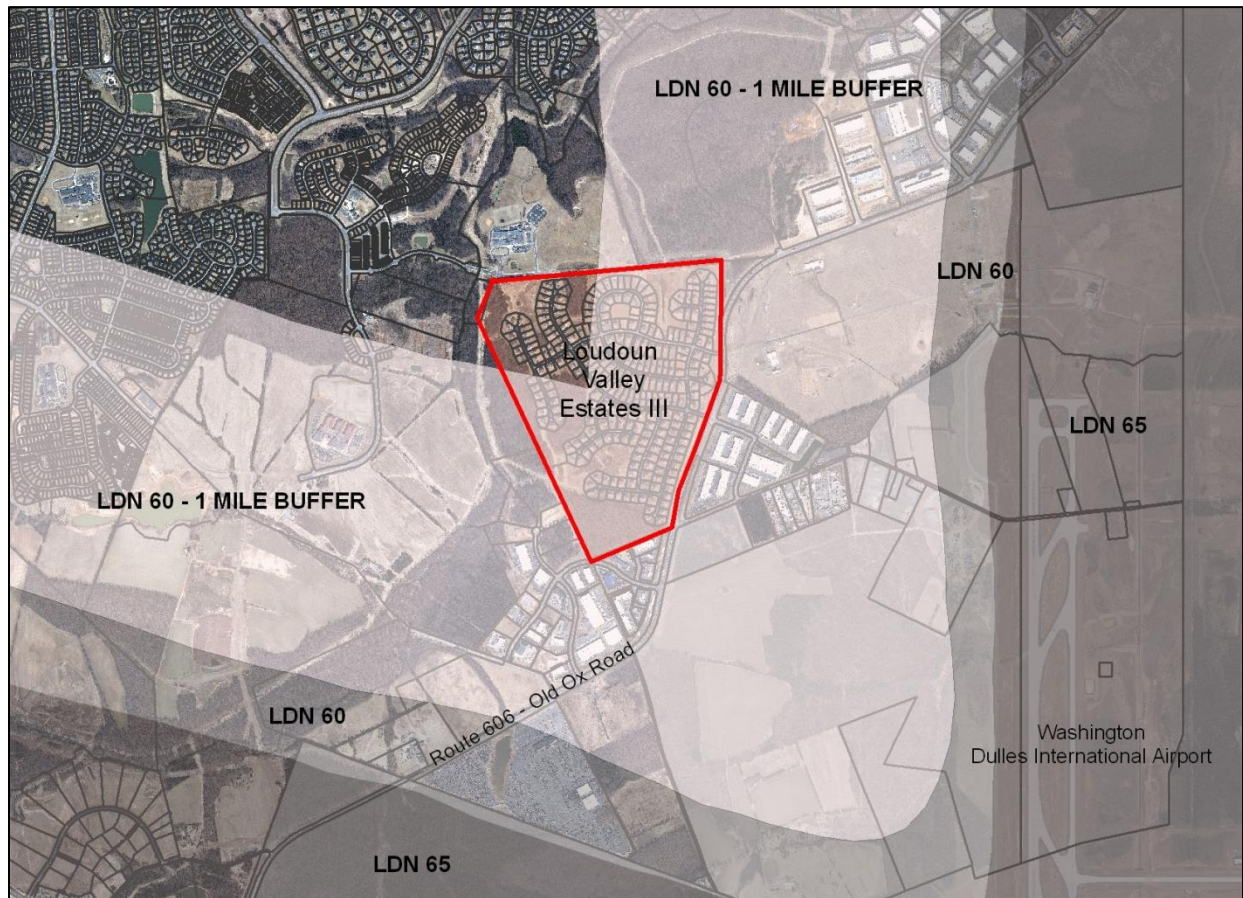


Figure 2. Airport Impact Overlay District

Option for a Hybrid Zoning District

Commissioners inquired about a hybrid zoning district option which would accommodate development restriction concerns voiced by both the residents and adjacent development community (i.e. building setback, performance standards for noise, light and glare, earthborn vibration, etc.). As outlined in the chart above, staff was able to establish that few, if any, development standards would change as a result of the remapping application. Where applicable standards would increase and/or otherwise apply, the Zoning Ordinance will permit modification of the noted standard, either through Special Exception (SPEX), Zoning Modification (ZMOD), or Zoning Map Amendment (ZMAP) application. The Planning Commission may propose a zoning text amendment to the Board by resolution; however, given the options noted above, such an exercise may not be necessary.

Homeowners' Sales Contract Disclosures

In response to statements by the public at the Planning Commission hearing that the PD-GI zoning designation was not disclosed to homeowners at time of purchase, Commissioners requested staff provide the Commission a copy of a homeowner sales contract in order to determine what disclosures regarding the PD-GI status of the property, if any, were made. Staff has requested the document from the HOA leadership and will provide a copy of the document to the Commission when it is made available.

Safety / Traffic Concerns of Homeowners

Several members of the public that spoke at the Planning Commission hearing indicated concerns regarding individual safety of homeowners. Staff was able to clarify that the concern related to the expansion of Route 606 and encroachment of the future road onto individual residential lots bordering Route 606.

As noted in the staff report, the 2010 Countywide Transportation Plan (2010 CTP) calls for Route 606 to be widened to an urban six-lane divided facility within a 200-foot Right of Way (ROW), with future conversion to a limited access facility. The 2010 CTP also states that the ultimate condition of the roadway (including the ultimate alignment) is to be determined by a later study in consultation with adjacent developments and stakeholders, to include the residents of the LVE III.

As part of the approval of the LVE III subdivision, ROW was provided to accommodate the previously planned six-lane, median-divided Route 606 (120 right of way). 160 feet of right of way has already been provided along shared frontage with Dulles Trade Center 1. 120 feet of right of way is provided between LVE III and NOAA. HOA property separates individual lots from the dedicated ROW and has been landscaped with intermittent earthen berms and vegetative screening.

VDOT is currently in the process of selecting a consultant to complete the design for expansion of Route 606 (part of the Dulles Loop Implementation Plan). The study period for the design of the road is a public process that will include an assessment of the project's impact on those residential lots that border Route 606. The assessment will determine what mitigation measures, if any, are necessary to offset any increase in traffic noise or impact on public safety. Additional ROW and easements necessary to expand Route 606 will be also be determined and will be negotiated with the LVE III HOA directly. While the study period includes opportunities for public comment, as noted above, the ultimate condition of the roadway (including the ultimate alignment) is to be determined in consultation with adjacent developments and stakeholders.

Amendments to the Vested Rights Agreement

A 2003 Vested Rights Agreement between the Loudoun County Board of Supervisors and Toll VA IV, L.P. vested the right of the developer to develop LVE III pursuant to preliminary subdivision plat SBPL 2001-0037. The Vested Rights Agreement states in part that “once a house is built on a proposed lot, future homeowners are not vested by this Agreement in any right to build additions or accessory structures on the lot that do not conform to all applicable zoning and other requirements existing at the time of their proposed construction.”

As of January 1, 2011, Toll VA has completed construction of homes within LVE III and has turned over control of the development to the HOA. Both parties to the Agreement (Loudoun County and Toll VA) have met their responsibilities pursuant to the Agreement. As such, the Agreement has been “performed” and therefore cannot be amended.

ISSUE STATUS / STAFF RECOMMENDATION:

Loudoun Valley Estates III has not been developed in accordance with County land use policies and is inconsistent with the planned land use designation (General Industrial); therefore, the application cannot be supported by staff. Should the Planning Commission wish to consider the application further, staff recommends that the Commission evaluate whether or not the zoning requirements of the proposed R-1 zoning district will adversely impact future development of General Industrial uses adjacent to, and in proximity of, LVE III (*see above chart*).

Should the Commission wish to support the application, staff suggests the Commission forward to the Board Findings which speak to the unique circumstance of the application (i.e. fully developed residential community within a PD-GI zoning district) and reaffirm the land use policies applicable to the Route 606 corridor (Industrial).

SUGGESTED MOTION(s):

1. I move that the Planning Commission forward ZMAP 2010-0004, Loudoun Valley Estates III, to the Board of Supervisors with a recommendation of denial, based on the attached Findings for Denial.

OR,

2. I move that the Planning Commission forward ZMAP 2010-0004, Loudoun Valley Estates III, to the Board of Supervisors with a recommendation of approval with the following Findings for Approval:

1) _____

2) _____

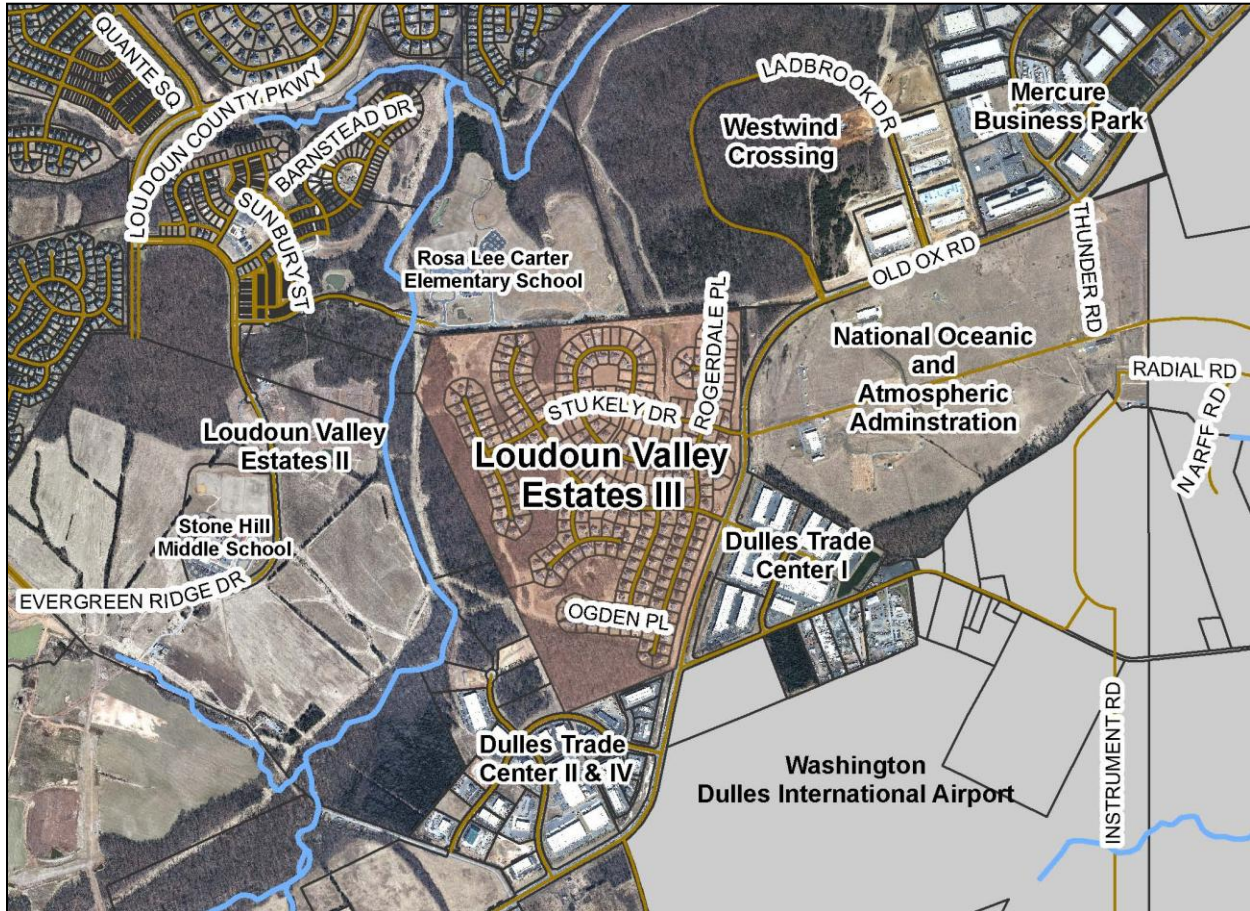
OR,

3. I move that the Planning Commission forward ZMAP 2010-0004, Loudoun Valley Estates III, to a subsequent worksession for further discussion.

ATTACHMENTS:

1. Vicinity Map
2. Findings for Denial
3. Consolidated List of HOA / Business Community Concerns

VICINITY MAP



Directions:

From Leesburg, take Route 15 south to Evergreen Mills Road (Route 621). Travel south to Old Ox Road (Route 606). Turn left (north) onto Route 606. Loudoun Valley Estates III is located along west side of Old Ox Road, approximately 2.8 miles north of Evergreen Mills Road and west of Dulles International Airport.

FINDINGS FOR DENIAL

1. The proposed remapping of the existing Loudoun Valley Estates III development from the PD-GI zoning district to the R-1 zoning district is inconsistent with the existing land use policies of the Revised General Plan (RGP) (Suburban Policy Area) which specifically designate land bordering Route 606 west and south of the Washington Dulles International Airport for General Industrial uses. RGP policies also state General Industrial uses will not to be adjacent to residential neighborhoods. An R-1 zoning designation would render General Industrial uses adjacent to the site inconsistent with RGP policies and may encourage the development of uses which are incompatible with existing General Industrial uses and the Washington Dulles International Airport.
2. The Revised 1993 Zoning Ordinance (Zoning Ordinance) allows for a reasonable use of the subject properties. Residential units within LVE III are legal-nonconforming uses which are taxed equivalent to residentially zoned properties of similar size. Building permits for construction of exterior structures and interior renovations are accommodated by the Zoning Ordinance. Building additions can be requested by individual landowners through submission of a Special Exception (SPEX) application. There is a reasonable economic use of the subject property under the PD-GI zoning district designation.
3. Sufficient open space and vegetative screening exists within the Loudoun Valley Estates III development to address buffering and performance standards otherwise required for commercial and industrial uses adjacent to a residential district. Further, the Buffer Yard and Screening Matrix of the Zoning Ordinance is use specific and would be applicable under a PD-GI or R-1 zoning designation.

ZMAP 2010-0004, LOUDOUN VALLEY ESTATES III
HOA / BUSINESS COMMUNITY CONCERNS
NOVEMBER 18, 2010 STAKEHOLDERS MEETING FOLLOW UP

Loudoun Valley Estates III Homeowners Association (via email 12-03-10):

1. Address MWAA concerns
 - a. County to determine in writing whether zoning change would impact plan to expand 606
 - b. County to comment on whether zoning change would directly impact future development of existing airport property with example large commercial project.
 - c. County to comment on whether zoning change could be used by other area land owners to ask County for a similar zoning change.
2. Update Planning Commission on progress with Northwood
3. Update Planning Commission on progress with Dulles Trade Center 2
4. Issue of future mortgages and non-conforming use
5. Statement from VDOT about the future construction of 606 and the area in front of the neighborhood (differences between R-1/PDGI, will we be view as residence under both)
6. Have the county state how the school-owned PD-GI access road that separates Northwood and us, affects the zoning issues in terms of noise, light, and vibration requirements.
7. Address our issues of building outside the footprint of our current homes.
8. Keep our full exits/entrances when 606 is widened.
9. 606 buffering at front of neighborhood.

Business Community (via email 12-03-10)

1. Obtaining additional ROW necessary for the Dulles Loop. Recommend obtaining an agreement with LVE III for the additional ROW along with assurance of a specific sound wall with appropriate landscaping installed.
2. Exemption of all PDGI, PDIP, CCC, etc. zoned properties from any additional setback or use requirements, ie., limitation, pursuant to any rezoning for special conditional placed up on the LVE III.
3. Exploring options for access for LVE III to the west across Broad Run to tie in to LVE II.
4. Creation of a formalized compact by Loudoun County, between the stakeholders, which cannot be dismissed by future Comp Plan changes, giving “certainty” to all concerned parties.

Board action would include:

- a. Request to the Commonwealth to include Route 606 and the Dulles Loop to be part of the Commonwealth’s vtran Northern Virginia Connector Corridor of Statewide Significance and/or designation of Route 606 and Dulles Loop as an Industrial Corridor/Transportation Overlay District, affirming future industrial zoning issues.
- b. Affirmation that the Loudoun CTP designated a 6-lane Route 606 as an interim condition, and that the Board will be open to planning for a future Rt. 606 at 8-lanes and potentially designated to be limited-access in the Dulles Loop portion of Rt. 606.
- c. Acknowledgement and protection for future heavy commercial use of Dulles Airport properties 24-hours a day, 7 days a week.